

which is grown with an arrangement, agreement, or contract for guaranteed payment. The failure to report the existence of any guaranteed contract or similar arrangement or agreement shall be considered as providing false information to CCC.

§ 1477.204 Determination of production.

(a) Production under this subpart shall include all harvested production, unharvested appraised production and assigned production for the total planted acreage of the crop on the unit.

(b) The harvested production of eligible crop acreage harvested more than once in a crop year shall include the total harvested production from all these harvests.

(c) If a crop is appraised and subsequently harvested, the actual harvested production shall be used to determine benefits.

(d) For all crops eligible for loan deficiency payments or marketing assistance loans with an intended use of grain but harvested as silage, ensilage, cabbage, hay, cracked, rolled, or crimped, production will be adjusted based on a whole grain equivalent according to instructions issued by the Deputy Administrator.

(e) For crops with an established yield and market price for multiple intended uses, a value will be calculated for each use.

(f) For crops sold in a market that is not a recognized market for the crop with no established county average yield and market price, 60 percent, if insured or noninsurable, or 65 percent, if uninsured, of the salvage value received will be deducted from the disaster payment.

(g) If a producer has an arrangement, agreement, or contract for guaranteed payment for production (as opposed to production based on delivery), the production to count shall be the greater of the actual production or the guaranteed payment converted to production according to instructions issued by the Deputy Administrator.

(h) Production that is commingled between units before it was a matter of record and cannot be separated by using records or other means acceptable to CCC shall be prorated to each

respective unit according to instructions issued by the Deputy Administrator. Commingled production may be attributed to the applicable unit, if the producer made the unit production of a commodity a matter of record before commingling and does any of the following, as applicable:

(1) Provides copies of verifiable documents showing that production of the commodity was purchased, acquired, or otherwise obtained from beyond the unit;

(2) Had the production measured in a manner acceptable to the county committee; or

(3) Had the current year's production appraised in a manner acceptable to the county committee.

(i) The county committee shall assign production for the unit when the county committee determines that:

(1) The producer has failed to provide adequate and acceptable production records;

(2) The loss to the crop is because of a disaster condition not covered by this subpart, or circumstances other than natural disaster, and there has not otherwise been an accounting of this ineligible cause of loss;

(3) The producer carries out a practice, such as double cropping, that generally results in lower yields than the established historic yields;

(4) The producer has a contract to receive a guaranteed payment for all or a portion of the crop; or

(5) A crop is late-planted.

(j) For sugarcane, the quantity of sugar produced from such crop shall exclude acreage harvested for seed.

(k) For peanuts, the actual production shall be all peanuts harvested for nuts regardless of their disposition or use as adjusted for low quality.

(l) For tobacco, except flue-cured and burley, the actual production shall be the sum of the tobacco: marketed or available to be marketed; destroyed after harvest; and produced but unharvested, as determined by an appraisal. For flue-cured and burley tobacco, the actual production shall be the sum of the tobacco: marketed, regardless of whether the tobacco was produced in the current crop year or a prior crop year; on hand; destroyed after harvest; and produced but

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unharvested, as determined by an appraisal.

§ 1477.205 Calculation of acreage for crop losses other than prevented planted.

(a) Subject to paragraph (b) of this section, the acreage of a crop planted in each planting period shall be considered a different crop for the purpose of determining disaster benefits under this subpart.

(b) In cases where there is a repeat crop, double crop or a multiple planting, each of these crops may be considered different crops if the county committee determines that:

(1) Both the initial and subsequent planted crops were planted with an intent to harvest;

(2) The subsequent crop was planted after the time when the initial crop would normally have been harvested;

(3) Both the initial and subsequent planted crops were planted within the normal planting period for that crop; and

(4) Both the initial and subsequent planted crops meet all other eligibility provisions of this part including good farming practices.

(c) In cases where an initial crop is planted and fails due to an eligible disaster condition and it is generally considered too late to replant and a subsequent crop is planted on the same acreage within its normal planting period in the same crop year and also failed because of an eligible disaster condition, both crops are eligible for disaster assistance if they meet all other eligibility provisions of this part.

§ 1477.206 Calculation of prevented planted acreage.

(a) When determining losses under this subpart, prevented-planted acreage will be considered separately from planted acreage of the same crop.

(b) Except as provided in paragraph (c) of this section, for insured crops, disaster payments under this subpart for prevented-planted acreage shall not be made unless RMA documentation indicates that the eligible producer received a prevented planting payment under the RMA-administered program.

(c) For insured crops, disaster payments under this subpart for pre-

vented-planted acreage will be made available for the following crops for which prevented planting coverage was not available and for which the county committee will make an eligibility determination according to paragraph (d) of this section: California safflowers; peanuts; peppers; popcorn; Central/Southern potatoes; sweet corn (fresh market); tomatoes (fresh market); tomatoes (processing).

(d) For uninsured or noninsurable crops, or the insured crops listed in paragraph (c) of this section, the producer must prove, to the satisfaction of the county committee, an intent to plant the crop and that such crop could not be planted because of an eligible disaster. The county committee must be able to determine the producer was prevented from planting the crop by an eligible disaster that both:

(1) Prevented most producers from planting on acreage with similar characteristics in the surrounding area; and

(2) Unless otherwise allowed by the Deputy Administrator, began no earlier than the planting season for the 1998 crop.

(e) Prevented planted disaster benefits under this subpart shall not apply to:

(1) Aquaculture, including ornamental fish; perennial forage crops grown for hay, seed, or grazing; ginseng root and ginseng seed; honey; maple sap; millet; nursery crops; sweet potatoes; tobacco; trees; turfgrass sod; and tree and vine crops;

(2) Any acreage which is double-cropped, even if the producer has a history of double-cropping acreage;

(3) Uninsured crop acreage that is unclassified for insurance purposes;

(4) Acreage that is used for conservation purposes or intended to be left unplanted under any USDA program;

(5) The same acreage from which any benefit is derived under any program administered by the USDA on which a crop is planted and fails during the crop year except as provided in 1477.106(f) of this part;

(6) Any acreage on which a crop other than a cover crop was harvested, hayed, or grazed during the crop year;

(7) Any acreage for which a cash lease payment is received for the use of the acreage the same crop year unless